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July 11, 1995

William F. Caton, Acting Secretary  
Federal Communications Commission  
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Room 222  
Washington, D.C. 20554

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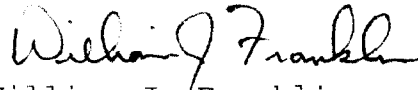
RE: ITV, Inc. and IVDS Affiliates, LLC  
WT Docket No. 95-47, RM-8476  
Amendment of Part 95 of the Commission's Rules to allow  
Interactive Video and Data Service licensees to provide  
Mobile Service to Subscribers

Dear Mr. Caton:

Enclosed on behalf of ITV, Inc. ("ITV") and IVDS Affiliates, LLC ("IALC") is an original and four (4) copies of the Reply Comments of ITV, Inc. filed in the above-referenced matter.

Please contact this law firm if you have any questions with respect to this matter.

Respectfully submitted,



William J. Franklin  
Attorney for ITV, Inc. and  
IVDS Affiliates, LLC

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WJF/mtf  
cc: ITV, Inc.  
IVDS Affiliates, LLC  
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**Mobile IVDS Service.** Virtually every commenting party (including ITV and IALC) supported the extension of IVDS service to mobile Response Transmitter Units ("RTUs").<sup>3/</sup> The dissonant note came from the law firm of Brown & Schwaninger ("B&S"), who appeared to assert that, as a matter of policy, the Commission should never provide added flexibility to services licensed by auction. Given this near-unanimous consensus, the Commission should permit IVDS licensees to serve mobile subscribers.

Indeed, the dispute in the comments arose on the extent to which IVDS licensees could serve mobile RTUs. Some commenters, e.g., CEIR, KMCI, and Vega, felt that IVDS licensees should be able to serve both fixed and mobile subscribers on a co-primary basis. One commenter (Grand) even argued that IVDS licensees should have the flexibility to serve only mobile subscribers. Others (RTT and Dispatch) took a more traditional view, arguing that mobile operations must remain secondary to fixed service.

EON took a middle position, and suggested that IVDS licensees should have the ability to serve mobile subscribers so long as they also have the ability to serve fixed subscribers as well. Because service to fixed subscribers is indistinguishable by an

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<sup>3/</sup> See, e.g., Comments of ITV/IALC; EON Corporation ("Eon"); Radio Telecom & Technology, Inc. ("RTT"); Tel-Logic, Inc. ("Tel/Logic"); Windgate Fund LLC; Commercial Realty St. Pete, Inc. ("CRSPI"); Interactive Service Designs ("ISD"); Committee for Effective IVDS Regulation ("CEIR"); Two Way TV ("Two Way"); Interactive Management Services, LLC ("IMS"); Triad TV Data ("Triad"); Dispatch Interactive Television ("Dispatch"); National Action Group for IVDS ("NAGI"); Henry Mayfield; KMS Interactive, et al. ("KMCI"); Richard L. Vega Group ("Vega"); Concepts to Operations ("Concepts"); and Grand Broadcasting Corporation ("Grand").

IVDS system from service to mobiles,<sup>4/</sup> EON's position effectively supports co-equal service to mobile subscribers.

**IVDS Licensee Flexibility.** Beyond the specifics of mobile IVDS service, several commenting parties suggested that the Commission provide IVDS licensees with the maximum possible flexibility. For example, ITV/IALC's own Comments (at 2-3) made the following points:

The NPRM also requests comments whether "any restrictions should be placed on the types of ancillary mobile services" that IVDS licensees would be permitted to offer. The only types of restrictions should be driven by well-documented technical and interference concerns.

In other radio services, the Commission is rapidly abandoning the notion that it should artificially limit the types of communications which its licensees may provide. Rather than have the uses of spectrum be defined by regulation, the Commission has found that the public interest is well served by letting the marketplace develop efficient uses for spectrum.

With the continuing development of the information highway, the Commission cannot accurately predict the continuing best use for any block of spectrum. The Commission should apply this "marketplace" policy to IVDS, and permit the broadest possible use of mobile IVDS communications which do not produce harmful electrical interference to others.

Other commenters (Vega, CEIR, KMCI, and Tel/Logic) independently proposed this concept. Indeed, the Comments of CEIR (at 7-8) noted that the Commission could profitably use its revision of the IVDS functional rules "to test a progressive new approach to regulation", e.g., by permitting "IVDS licensees [to] offer

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<sup>4/</sup> After all, a fixed RTU is merely a mobile RTU that isn't moving, e.g., a parked car or house trailer.

whatever services they believed would find a market, using whatever service parameters they deemed appropriate."

**RTU Duty Cycle.** Virtually all commenters supported relaxation or elimination of the 5-second per hour (or 2% duty cycle). In its comments ITV/IALC supplied an engineering analysis showing that the duty cycle could be extended without the creation of harmful interference as the maximum ERP of the RTU was reduced, and in fact eliminated for 100 milliwatt RTUs. EON agreed (Comments at 5 n.10) with ITV/IALC's analysis.

Other commenters (e.g., ISD, Triad, IMS, Two Way, Concepts, KMCI, CEIR, Tel/Logic) were more aggressive. They argued that the IVDS licensees' primary obligation is to prevent harmful interference to TV channel 13 or, if interference occurs, to eliminate it. They saw the duty cycle as one method to prevent interference, reduction of maximum power levels as another, and limiting of RTU transmissions to the Channel 13 blanking interval as a third. They felt that the Commission's regulations should specify the ultimate regulatory goal (prevent or eliminate harmful interference), but not the duty cycle as a required method to achieve this goal.

Beyond that, some comments (e.g., NAGI, Concepts) observed that the duty cycle had no legitimate function in markets in which TV Channel 13 had no service. No channel-13-specific interference protection rules should apply to those markets.

Having reviewed the comments, ITV/IALC supports the elimination of the IVDS duty-cycle limitation as the proscribed method to prevent harmful interference to TV channel 13.

**II. THE COMMENTS WHICH OPPOSE CONSIDERATION OF THE STATUS OF MOBILE IVDS AS A COMMERCIAL MOBILE RADIO SERVICE FAILED TO CONSIDER THE STATUTORY REQUIREMENTS OF SECTION 309 OF THE COMMUNICATIONS ACT.**

In their Comments, ITV/IALC observed that the Commission has a statutory duty under Section 309 of the Communications Act to classify all wireless mobile services as either CMRS or PMRS, and then to regulate them appropriately. Accordingly, ITV/IALC requested that the Commission make this determination expeditiously with respect to mobile IVDS.

Two commenting parties appeared to ignore this statutory requirement. Although it otherwise argues for IVDS licensee flexibility, Grand argued that the Commission must adopt rules which limit mobile IVDS to the PMRS. This cannot be done under Section 309. Once an IVDS licensee offers an interconnected mobile service that is provided for profit to the public (or that is the functional equivalent of such a mobile service, whether or not interconnected), the mobile service must become CMRS.

Similarly, EON argues that the Commission must prohibit direct interconnection between an IVDS system and the public switched telephone network, but explicitly permit indirect interconnection through a third-party (perhaps EON, itself). This distinction would apparently fail the "functional equivalent"

prong of the CMRS test, and needlessly limit the marketplace flexibility of IVDS licensees.

Rather than adopting an inflexible classification of mobile IVDS as either CMRS, PMRS, or hybrid CMRS/PMRS, the Commission should adopt criteria, perhaps after issuing a Further NPRM, under which IVDS licensees will know how their IVDS services will be classified under Section 309.

#### **CONCLUSION**

Accordingly, ITV, Inc. and IVDS Affiliates, LLC respectfully request that the Commission amend its IVDS rules as set forth in their Comments and herein.

Respectfully Submitted,

**ITV, INC.  
IVDS AFFILIATES, LLC**

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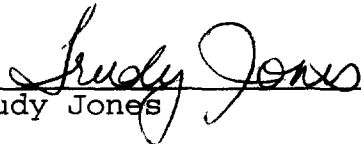
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